

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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JIM CASSI, an individual,  
Plaintiff,

v.

GENERAL MOTORS, LLC, a limited  
liability company; and DOES 1  
through 10, inclusive,  
Defendant.

No. 2:23-cv-01801 WBS JDP

ORDER RE: PLAINTIFF'S MOTION  
TO REMAND AND DEFENDANT'S  
MOTION TO DISMISS

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Plaintiff Jim Cassi filed this action against General Motors, LLC ("GM") in state court, alleging violations of the Song-Beverly Act, fraud, and violations of the Business & Professions Code § 17200 ("UCL"). (Compl. (Docket No. 1-1).). Defendant removed this action to federal court based on diversity jurisdiction. (Docket No. 1.) Defendant then filed a motion to dismiss. (Mot. to Dismiss (Docket No. 8).) Plaintiff filed a motion to remand. (Mot. to Remand (Docket No. 22).)

I. Motion to Remand

1           A.    Legal Standard

2           Civil cases not arising under federal law are removable  
3 to federal court only if each plaintiff's citizenship is  
4 different from each defendant's citizenship, and the amount in  
5 controversy exceeds \$75,000. 28 U.S.C. § 1332(a)(1). The court  
6 finds that defendant has established both with a preponderance of  
7 the evidence.<sup>1</sup>

8           1.    Diversity

9           Plaintiff alleges that he is a resident of Modesto, CA.  
10 (Compl. ¶ 1.) Plaintiff's counsel has also provided defendant  
11 with a copy of the vehicle lease agreement which lists a  
12 California address for plaintiff. (Strotz Decl. (Docket No. 24-  
13 2).) This is sufficient to show that plaintiff is a California  
14 citizen. See Bradley Min. Co. v. Boice, 194 F.2d 80, 84 (9th  
15 Cir. 1951) (plaintiff's state of residence presumptively state of  
16 citizenship); Salazar v. Ford Motor Co., No. 2:21-cv-06756-FLA,  
17 2022 WL 16855563, at 4 (C.D. Cal. Nov. 10, 2022) (party may rely  
18 on an address listed in a purchase agreement to meet burden of  
19 establishing individual's citizenship) (collecting cases).

20           Defendant is headquartered in and has its principal  
21 place of business in Michigan; it is incorporated in Delaware.

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23           <sup>1</sup>    Accompanying plaintiff's remand reply are evidentiary  
24 objections to defendant's Kuhn Declaration. (Objs. (Docket No.  
25 26).) Specifically, plaintiff argues that various declarations  
26 regarding GM's citizenship (1) lack the proper foundation  
27 pursuant to Federal Rule of Evidence 602, and (2) are conclusory.  
28 (Objs.) Plaintiff's objections are without merit. Timothy Kuhn  
is employed as counsel for GM (Kuhn Decl. (Docket No. 24-3) ¶ 1.)  
This is sufficient to establish Mr. Kuhn's qualification to speak  
on GM's corporate citizenship. Accordingly, the court will deny  
plaintiff's evidentiary objections and motion to strike.

(Kuhn Decl. (Docket No. 24-3) ¶¶ 4-6.) The same is true for defendant's ultimate parent, General Motors Company. (Id.) This is sufficient to show that defendant is a citizen of Michigan and Delaware.<sup>2</sup> 28 U.S.C. § 1332(c)(1); Johnson v. Columbia Props. Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006) (limited liability corporations have citizenship of all their members).

Accordingly, defendant has established that parties are completely diverse pursuant to 28 U.S.C. § 1332.

## 2. Amount in Controversy

A defendant's initial burden in establishing the amount in controversy for removal purposes is minimal: even a "plausible allegation that the amount in controversy exceeds the jurisdictional threshold" can suffice. Dart Cherokee Basin Operating Co., LLC v. Owens, 135 S. Ct. 547, 551, 554 (2014) (quoting 28 U.S.C. § 1446(a)). See also Gen. Motors Corp. v. Manly Oldsmobile-GMC, Inc., No. C-07-0233 JCS, 2007 WL 776261, at \*3 (N.D. Cal. Mar. 12, 2007) ("Here, the allegations in the complaint do not establish to a legal certainty that the amount-in-controversy requirement cannot be met, that is, that there is no set of facts that could be proven that would result in equitable relief which would have a value . . . of \$75,000.00 or more.")

Defendant clears this burden. During oral argument, plaintiff reported that the actual amount paid to date under

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<sup>2</sup> Defendants sued under fictitious names are disregarded when determining removal jurisdiction. 28 U.S.C. § 1441(b)(1). Accordingly, the court does not consider defendants Does 1-10 for the purpose of removal jurisdiction.

1 plaintiff's lease contract was around \$6,000. This provides a  
2 plausible floor for actual damages. A Song-Beverly civil penalty  
3 of twice this amount, see Cal. Civ. Code § 1794(c), is an  
4 additional \$12,000.

5 As for attorneys' fees, defendant points to its  
6 apparently significant experience with these types of cases,  
7 where plaintiffs' counsel reportedly often claim hourly rates of  
8 \$350-500 and seek fees exceeding \$50,000 under section 1794(d) of  
9 Song-Beverly. (Remand Opp'n (Docket No. 24) at 5; Kuhn Decl.  
10 (Docket No. 1-4) ¶ 10.) Defendant also refers the court to case  
11 law in support of the \$50,000 amount. See, e.g., Selinger v.  
12 Ford Motor Co., No. 2:22-CV-08883-SPG-KS, 2023 WL 2813510, at \*11  
13 (C.D. Cal. Apr. 5, 2023) (In Song-Beverly actions, "\$50,000 in  
14 attorney's fees is, on average, commonly viewed as a reasonable  
15 estimate . . . .").

16 Finally, as to punitive damages, defendant offers  
17 analogous cases where punitive damages exceeded \$50,000. (Remand  
18 Opp'n at 3-6.) See Selinger, 2023 WL 2813510, at \*10; In re  
19 Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab.  
20 Litig., No. MDL 2672 CRB (JSC), 2019 WL 693234, at \*5-6 (N.D.  
21 Cal. Feb. 19, 2019). See also Simmons v. PCR Tech., 209 F. Supp.  
22 2d 1029, 1033 (N.D. Cal. 2002) (defendant may introduce evidence  
23 of jury verdicts in cases involving analogous facts to establish  
24 probable punitive damages).

25 Accordingly, defendant has made a plausible showing  
26 that the amount in controversy exceeds \$75,000. The court will  
27 therefore deny plaintiff's motion to remand.

28 II. Motion to Dismiss

1 Defendant directs its motion to dismiss only at  
2 plaintiff's common law fraud claim (Claim 4), which is pled under  
3 misrepresentation and concealment theories, and the claim under  
4 the "fraudulent prong" of the UCL (Claim 5) (collectively the  
5 "fraud claims"). (Mot. to Dismiss at 2.) Allegations of  
6 fraudulent activity must satisfy the heightened pleading standard  
7 of Rule 9(b) and identify "the who, what, when, where, and how"  
8 of the fraud. Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106  
9 (9th Cir. 2003). Plaintiff's fraud claims are defective in this  
10 respect, as they do not even come close to alleging with the  
11 requisite particularly the "who, what, when, where, and how" of  
12 the specific acts comprising affirmative misrepresentations and  
13 fraudulent conceal.

14 Plaintiff appears to acknowledge this deficiency and  
15 requests leave to amend his complaint should the court dismiss  
16 his fraud claims. (Docket No. 20 at 5.) Defendant does not  
17 oppose such a request (Docket No. 23 at 3), and the complaint's  
18 significant shortage of particular allegations regarding fraud  
19 suggests that amendment would not be futile for plaintiff's fraud  
20 claims. Accordingly, the court will grant defendant's motion to  
21 dismiss and grant plaintiff leave to amend his complaint to  
22 allege fraud with the requisite particularity.

23 IT IS THEREFORE ORDERED that plaintiff's motion to  
24 remand to state court (Docket No. 22) be, and the same hereby is,  
25 DENIED.<sup>3</sup>

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27 <sup>3</sup> Plaintiff's evidentiary objections and motion to strike  
28 (Docket No. 26) is also DENIED.

1 IT IS FURTHER ORDERED that defendant's motion to  
2 dismiss plaintiff's common law fraud claim (Claim 4) and claim  
3 under the "fraud prong" of California Business & Professions Code  
4 § 17200 (Claim 5) (Docket No. 8) be, and the same hereby is,  
5 GRANTED. Plaintiff's fraud claims are DISMISSED with leave to  
6 amend. Plaintiff may file a First Amended Complaint consistent  
7 with this order, if able, within twenty days of its issuance.

8 Dated: October 31, 2023



9 **WILLIAM B. SHUBB**

10 **UNITED STATES DISTRICT JUDGE**